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84-1532

No.....

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

STATE OF NEVADA, et al.,

Petitioners,

v.

VIRGINIA M. OLIVER,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether an order denying a state's claim of Eleventh Amendment and sovereign immunity is immediately appealable pursuant to the "collateral order" doctrine of Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949).

2. Whether the Eleventh Amendment and/or the principle of sovereign immunity require the limitations period for filing a Title VII claim with the EEOC be construed as being jurisdictional where a state is the defendant/employer.

3. Whether the Eleventh Amendment and/or the principle of sovereign immunity require the precisely drawn procedural requirements of Title VII to be strictly construed where a state is the defendant/employer.

LIST OF PARTIES

Petitioners, defendants-appellants in the United States Court of Appeals for the Ninth Circuit, are the State of Nevada, the Nevada Department of Wildlife, Joe Greenley, Larry Barngrover and the Director of the Nevada Department of Wildlife. Respondent, plaintiff-appellee in the Ninth Circuit, is Virginia M. Oliver.

TOPICAL INDEX

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
TABLE OF AUTHORITIES	v
OPINIONS BELOW	2
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	
1. An order denying a state's claim of Eleventh Amendment and sovereign immunity is an immediately appealable collateral order within the meaning of Cohen v. Beneficial Industrial Loan Corp.	10
2. The Eleventh Amendment and/or the principle of sovereign immunity require the limitations period of 42 U.S.C. § 2000e-5(e) to be construed as jurisdictional where a state is the defendant/employer.	20
3. The Eleventh Amendment and/or the principle of sovereign immunity require the procedural requirements of Title VII to be strictly construed where a state is the defendant/employer.	26

TOPICAL INDEX CONTINUED

	Page
CONCLUSION	29
APPENDIX A	1a
APPENDIX B	9a
APPENDIX C	11a
APPENDIX D	12a
APPENDIX E	13a
APPENDIX F	16a
APPENDIX G	17a

TABLE OF AUTHORITIES

Cases	Page
Abney v. United States, 421 U.S. 651 (1977)	12
Baldwin County Welcome Center v. Brown, __U.S.__, 104 S. Ct. 1723, 1726 (1984)	28
Block v. North Dakota ex. rel. Bd. of University & Schl. Lands, 461 U.S. 273, 287 (1983)	23
Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949)	9,10
Coopers & Lybrand v. Livesay, 437 U.S. 463, 468 (1978)	10
Employees v. Missouri Public Health & Welfare Department, 411 U.S. 279, 280, 294 (1973)	17,18
Fitzpatrick v. Bitzer, 427 U.S. 445 (1976)	22
Ford Motor Co. v. Department of Treasury, 323 U.S. 459, 467 (1945)	20
Helstoski v. Meanor, 442 U.S. 500 (1979)	12
Hollingsworth v. Virginia, 3 Dall. 378, 382 (1798)	16
Mitchell v. Forsyth, Dk. No. 84-335, cert. granted, __ U.S.__, 105 S. Ct. 322 (1984)	13
Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 11-12 (1983)	10

Cases, continued — Page

Nixon v. Fitzgerald, 457 U.S. 731, 743 (1982) — 12,21

Occidental Life Ins. Co. of Cal. v. E.E.O.C., 432 U.S. 355, 372 (1977) — 28

Pennhurst State School & Hospital v. Halderman, __U.S.__ 104 S. Ct. 900, 906, 907, 908 (1984) — 15,17,18

United States v. Peters, 9 U.S. (5 Cranch) 115, 139 (1809) — 16

Zipes v. Trans World Airlines, 455 U.S. 385 (1982) — 22

Constitutional and Statutory Provisions

U. S. Constitution, Article III, §§ 1 and 2 — 3,24,26

U. S. Constitution, Eleventh Amendment — 3,7,10,11,13-26,28

78 Stat. 253 — 3

28 U.S.C. § 1254(1) — 2

28 U.S.C. § 1291 — 3, 9

28 U.S.C. § 1292(b) — 9

28 U.S.C. §§ 1331 and 1343 — 4

28 U.S.C. §§ 2201 and 2202 — 4

42 U.S.C. § 2000d — 5

42 U.S.C. § 2000e, et seq. — 3, 4

42 U.S.C. § 2000e-5(b) — 27

Constitutional and Statutory Provisions, continued — Page

42 U.S.C. § 2000e-5(e) — 7,8,20,22,27

Miscellaneous

Title VII of the Civil Rights Act of 1964 — 3,4,21,25,26

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VIRGINIA M. OLIVER,

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The State of Nevada, its Department of Wildlife and certain current and former officials of the Department petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The order of the United States District Court for the District of Nevada, dated March 6, 1984, is not reported but is printed as Appendix A hereto. The order of the United States Court of Appeals for the Ninth Circuit from which certiorari is sought, dated October 9, 1984, dismissing the appeal on jurisdictional grounds is not reported but is printed as Appendix C hereto. The order of the Court of Appeals, dated December 28, 1984, denying a rehearing is not reported but is printed as Appendix D hereto.

JURISDICTION

Review is sought of the order of the Court of Appeals dated October 9, 1984. By order filed December 28, 1984, the petition for rehearing was denied. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioners rely on the Eleventh Amendment to the Constitution of the United States:

> The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another state, or by citizens or subjects of any foreign state.

Petitioners also rely on Article III, Sections 1 and 2, of the Constitution and 28 U.S.C. § 1291, which are reprinted as Appendices E and F hereto.

Petitioners further rely on Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U.S.C. § 2000e et seq., the relevant portions of which are reprinted as Appendix G hereto.

STATEMENT OF THE CASE

Respondent sought to invoke the jurisdiction of the district court under

Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, 42 U.S.C. § 2000e et seq., 28 U.S.C. §1331 (federal question) and 28 U.S.C. § 1343 (civil rights). The complaint also stated that jurisdiction was invoked pursuant to 28 U.S.C. §§ 2201 and 2202 (declaratory judgments).

In July, 1979, respondent was appointed to a position with the Nevada Department of Wildlife that was temporarily funded by federal funds. Her employment ceased on July 31, 1981, when funding for the position expired.

On August 4, 1981, four days after her employment ended, respondent telephoned the Equal Employment Opportunity Commission ("EEOC") to inquire about her rights with respect to filing a claim of discrimination. In that conversation, she was told that the

process of filing a charge could be initiated by sending a letter to the EEOC which identified her employer and stated why she thought she had been discriminated against.

Instead of acting on this information, respondent decided she should send a letter complaining of sex discrimination to the U.S. Department of the Interior. She took this action based upon her interpretation of the Department of Wildlife's Title VI nondiscrimination policy which was established to facilitate compliance with the Department of Interior's Title VI guidelines. Title VI prohibits discrimination on the basis of race, color, national origin, age or handicap in any program or activity receiving federal financial assistance. It does not prohibit employment discrimination or discrimination based on sex. See 42 U.S.C.§ 2000d.

In January, 1982, respondent sent a letter to the Department of the Interior. In February, the Department of the Interior informed respondent that it had no jurisdiction over employment matters. Respondent was referred to the EEOC.

In March, 1982, respondent sent a one-page letter to the EEOC. The EEOC informed her that the information she provided was insufficient for filing a charge of discrimination. On April 2, 1982, 245 days after respondent's last day of employment, a sufficient charge of discrimination was received by the EEOC. The complaint alleged, and petitioner's answer admitted, that this was the date a charge was received.

A right to sue letter was subsequently issued and suit was filed in U. S. District Court. Petitioners moved for summary judgment on the ground that respondent had failed to file a charge

with the EEOC within the time period specified by 42 U.S.C. § 2000e-5(e).

The district court determined that respondent was required to file a charge with the EEOC within 180 days after July 31, 1981, but also decided that this time period may be subject to equitable tolling. The court set a hearing for the purpose of receiving evidence on the question of whether equitable tolling should be permitted.

Prior to the hearing, the petitioners submitted a supplemental memorandum stating their objection that the Eleventh Amendment and the principle of sovereign immunity denied the district court the judicial power and jurisdiction to apply equitable tolling principles to the State of Nevada and its Department of Wildlife. The district court proceeded with the hearing despite this objection.

The court determined that the limitations period specified by 42 U.S.C. § 2000e-5(e) should be tolled for the period beginning when respondent first learned of the existence of the Department's nondiscrimination policy in December, 1981, and terminating when the Department of the Interior advised her that it had no jurisdiction over her claim on February 12, 1982. By doing so the court included in the tolled period the time which elapsed before a claim was filed with any agency. The Court concluded that a "reasonable" tolling period was 43 days.

The district court found that respondent "filed" a "charge" with the EEOC on March 9, 1982, 221 days after her final day of employment, when she mailed a letter containing insufficient information to the EEOC. The combination of the 43-day tolling period with this finding

provided the district court with the means to find that respondent's "charge" was timely filed on the 178th day.

Petitioners sought an amendment of the district court order to obtain an interlocutory appeal of the order pursuant to 28 U.S.C. § 1292(b). Subsequently, and within the time period specified by law, petitioners filed their notice of appeal predicated on the final decision rule of 28 U.S.C. § 1291. After the time for filing a notice of appeal had run, the district court denied the motion seeking an amendment. See Appendix B.

The Ninth Circuit Court of Appeals dismissed the appeal on the ground that the order sought to be reviewed was not a collateral order within the meaning of Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949).

REASONS FOR GRANTING THE WRIT

1. An order denying a state's claim of Eleventh Amendment and sovereign immunity is an immediately appealable collateral order within the meaning of Cohen v. Beneficial Industrial Loan Corp.

Under the "collateral order" doctrine of Cohen v. Beneficial Industrial Loan Corp., supra, certain interlocutory orders are immediately appealable to the courts of appeal. The requirements which must be satisfied in order to come within this doctrine are:

> [T]he order must conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal from a final judgment.

Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 11-12 (1983), citing Coopers & Lybrand v. Livesay, 437 U.S. 463, 468 (1978) (footnote omitted).

It is the position of the petitioners that an order denying a claim of Eleventh Amendment and sovereign immunity meets these requirements and constitutes an immediately appealable collateral order.

The existence of the right of appeal where a defendant is denied a claimed right to absolute immunity from trial itself is of particular importance. Without such a right, a defendant who possesses the protection of absolute immunity is forced to submit to the jurisdiction of the court in order to safeguard its rights. By being forced to defend itself against the possibility of the entry of adverse judgment, a defendant loses the protection afforded by absolute immunity regardless of whether an adverse judgment is ever entered against the defendant. It is this loss of immunity and the necessarily attendant time and resources spent in defending a claim which

make an order denying a claim of absolute immunity effectively unreviewable on appeal from a final judgment. When the claim of immunity arises from the provisions of the Constitution and the doctrine of sovereign immunity, the importance of the questions presented thereby require a resolution by this Court.

This Court has previously recognized that orders denying claims of absolute immunity based upon constitutional considerations must be treated as immediately appealable collateral orders. See Helstoski v. Meanor, 442 U.S. 500 (1979) (claim of immunity under the Speech and Debate Clause); Abney v. United States, 421 U.S. 651 (1977) (claim of immunity under Double Jeopardy Clause); Nixon v. Fitzgerald, 457 U.S. 731 (1982) (claim of presidential immunity). This Court recently granted a petition for a

writ of certiorari which raises the question of whether the collateral order doctrine permits immediate appeal from an order denying a claim of qualified immunity asserted by a former attorney general. See Mitchell v. Forsyth, Dk. No. 84-335, cert. granted, ____ U.S. ____, 105 S. Ct. 322 (1984).

An order denying a claim of absolute immunity from trial arising from the doctrine of sovereign immunity and the Eleventh Amendment meets the requirements of an appealable collateral order: (1) The refusal of the district court to dismiss the action on the State's motion for summary judgment conclusively determined that the claims of immunity from trial would not be recognized. (2) The question of whether the claim of absolute immunity should prevent trial is completely separate from the merits of the respondent's claim. (3) The burden of

having to appear and defend itself against the possibility of the entry of an adverse judgment makes the denial of a claim of immunity effectively unreviewable on appeal from a final judgment.

The question posed is whether the immunities afforded a state by the principle of sovereign immunity and the Eleventh Amendment are of such a nature as to give a state the right of immediate appeal where a claim of immunity is denied. This question has never been directly addressed by this Court. The initial question presented by this petition is whether these immunities are of such a nature as to immunize a state from having even to defend itself in federal court where one or both of the immunities are applicable.

This question presents both important constitutional and practical concerns of the states. These same concerns are

shared by the United States with respect to its sovereign immunity. This Court has recently reemphasized the "vital role" of Eleventh Amendment and sovereign immunity in our federal system. Pennhurst State School & Hospital v. Halderman, __ U.S.__, 104 S. Ct. 900, 907 (1984). If states are denied the right of immediate appeal of orders denying the protection of these immunities, this vital role will be reduced to nothing more than a mere theoretical consideration, a consideration which may give rise to some intellectual reflection, but not one giving meaning and due recognition to the importance of these immunities.

The practical concerns presented by this question embrace the unnecessary waste of both the resources of the states and the courts in proceeding with suits over which the courts have no subject matter jurisdiction. Permitting an

immediate appeal from an order denying the protection of these immunities will resolve this issue before trial and prevent any undue expenditure of resources. This petition should be granted in order to resolve these basic constitutional and practical concerns.

While the Court has never directly addressed the question presented, its prior cases indicate that these immunities are of such a nature as to protect the states from trial itself. The Eleventh Amendment, by its very terms, provides that the judicial power of the United States shall not be construed to extend to certain suits commenced or prosecuted against a state. United States v. Peters, 9 U.S. (5 Cranch) 115, 139 (1809) (emphasis added). As early as the decision in Hollingsworth v. Virginia, 3 Dall. 378, 382 (1798), this Court has construed the effect of the Eleventh

Amendment as prohibiting the exercise of "any jurisdiction" by a federal court over suits against states in federal court brought by certain parties.

This prohibition is ordinarily expressed in terms of a state being "immune from suits" (Employees v. Missouri Public Health & Welfare Department, 411 U.S. 279, 280 (1973)) or in terms of a suit against a state being "proscribed by the Eleventh Amendment." Pennhurst, supra, at 908. The Eleventh Amendment does not merely preclude the entry of a judgment against a state by a federal court. Rather, the fundamental principle of sovereign immunity, as affirmed by the language of the Eleventh Amendment, deprives federal courts of the jurisdiction to even "entertain" an unconsented suit against a state. Id., at 907, n.8.

This immunity from suit involves "the problems of federalism inherent in making one sovereign appear against its will in the courts of the other . . ." Id., at 907 (quoting Employees v. Missouri Public Health & Welfare Department, 411 U.S. 279, 294 (1973) (Marshall, J., concurring in result).

The significance of the Eleventh Amendment "lies in its affirmation that the fundamental principle of sovereign immunity limits the grant of judicial authority in Art. III," Pennhurst at 906. If the principle of sovereign immunity and the immunity from the prosecution or commencement of suits recognized by the Eleventh Amendment are to maintain the vital roles recognized by this Court, the denial of the assertion of the protection afforded thereby must be subject to review prior to trial. Even if a state prevails on the merits of the claims asserted

against it, the protection provided by these immunities will have been lost by requiring the state to appear and defend against the suit.

The conduct of the district court in this case illustrates the problem faced by states in defending a suit prohibited by these immunities. Nevada asserted the protection of these immunities before the hearing held on the motion for summary judgment and again in its request for amendment of the order to permit an immediate appeal. The district court simply ignored these claims of immunity and never addressed them in the orders it issued. When district courts refuse to even address a claim of immunity, states must have the right to immediately seek appellate review in order to prevent the complete abrogation of Eleventh Amendment and sovereign immunity. The immunities asserted by the State of Nevada are

fundamental protections afforded the states in our federal system of government. This Court has given effect to these immunities by permitting claims of immunity to be raised at any time in a proceeding. See Ford Motor Co. v. Department of Treasury, 323 U.S. 459, 467 (1945). The failure of the lower courts in this matter to recognize this principle requires the intervention of this Court to rectify an error of Constitutional dimensions.

2. The Eleventh Amendment and/or the principle of sovereign immunity require the limitations period of 42 U.S.C. § 2000e-5(e) to be construed as jurisdictional where a state is the defendant/employer.

If this Court finds that an order denying a claim of sovereign and Eleventh Amendment immunity is an immediately appealable collateral order, the substantive claim of immunity presents a pure question of law appropriate for

resolution by this Court. In view of the fundamental importance of the question presented and with due regard for concerns of judicial economy, there is no need to remand to the Court of Appeals for a decision on the merits. See Nixon v. Fitzgerald, supra, at 743 n. 23.

Absent consent, a suit in which the state or one of its agencies is named as the defendant is proscribed by the Eleventh Amendment with one exception. That exception permits a suit against the state where Congress has abrogated the Eleventh Amendment immunity pursuant to the power conferred on it by the Fourteenth Amendment. Although Congress did not expressly waive the states' Eleventh Amendment immunity in Title VII cases, this Court has held that by appropriate legislation Congress effectively accomplished a limited waiver.

Fitzpatrick v. Bitzer, 427 U.S. 445 (1976).

This waiver appears to be limited in that the immunity is abrogated only if the claimant satisfies the statutory procedural prerequisites. See id. at 449, n. 2. One of the statutory procedural prerequisites to filing a Title VII suit against a state is the requirement of the filing of a charge with the EEOC within the 180-day period specified by 42 U.S.C. § 2000e-5(e).

Petitioners are aware that, with respect to private employers, the filing of a timely charge with the EEOC is not a jurisdictional prerequisite to suit in federal court. Zipes v. Trans World Airlines, 455 U.S. 385 (1982). However, in deciding that case this Court was not presented with the jurisdictional bars presented by the principle of sovereign immunity and the Eleventh Amendment.

The basic rule of federal sovereign immunity is that the United States cannot be sued without the consent of Congress. Block v. North Dakota ex. rel. Bd. of University & Schl. Lands, 461 U.S. 273, 287 (1983). When Congress attaches conditions to legislation waiving the sovereign immunity of the United States, those conditions must be strictly observed. Id. and cases cited therein. This same principle is applicable where Congress has acted to abrogate the immunity conferred on a state pursuant to the principle of sovereign immunity and the Eleventh Amendment. The conditions imposed by Congress on the abrogation of these rights must also be strictly observed.

The application of the doctrine of equitable tolling by the District Court effectively demolished the precisely drawn terms of the waiver by Congress of the

Eleventh Amendment immunity of Nevada. By use of this doctrine, the district court purported to utilize its Article III power to limit the immunity held by the State of Nevada pursuant to the doctrine of sovereign immunity and the Eleventh Amendment. This assumption of authority constituted a fundamental constitutional error. Article III imposes no limits on the exercise of a state's sovereign and Eleventh Amendment immunities. Rather, these immunities limit the grant of judicial power contained in Article III! Pennhurst, supra, at 906.

For the same reasons that this Court in Pennhurst held that the judge-made doctrine of pendent jurisdiction could not act to displace the explicit limitation on federal jurisdiction contained in the Eleventh Amendment, the judge-made doctrine of equitable tolling cannot act to displace the explicit conditions that

Congress placed on the abrogation of the states' Eleventh Amendment immunity under Title VII. The determination by the district court that it had the Article III power to override these fundamental limitations on the federal judicial power was a complete negation and disregard for "the vital role of the doctrine of sovereign immunity in our federal system." Id. at 907.

The objection of the petitioners to the use of equitable tolling applies with equal force to similar objections made by the federal government on sovereign immunity grounds. Only Congress has the authority to abrogate the sovereign immunity of the federal government. However, based upon the action taken by the district court herein, it is apparent that this district court would also assume the authority to abrogate federal sovereign immunity. The action of the

district court taken in direct disregard for these fundamental concepts requires the review of this Court.

3. The Eleventh Amendment and/or the principle of sovereign immunity require the procedural requirements of Title VII to be strictly construed where a state is the defendant/employer.

Even apart from the foregoing disregard of fundamental concepts that form the basis of our federal system of government, the court completely ignored the procedural requirements imposed by Congress for the filing of Title VII claims. While Congress determined that a state's Eleventh Amendment immunity would be abrogated only when certain requirements are met, the district court used an illusory Article III power to completely rewrite these requirements.

Among these requirements are the requirements that a charge be in writing under oath or affirmation and contain such

information and be in such form as the Commission requires. 42 U.S.C. § 2000e-5(b). This charge must be filed with the EEOC within the time limit imposed by 42 U.S.C. § 2000e-5(e).

The district court simply ignored these minimal requirements of the conditions of waiver. It held that a sufficient charge consisted of an unsworn one-page letter that the EEOC explicitly rejected as containing insufficient information. It also held that the charge was filed upon mailing.

Perhaps even more startling than the foregoing was the district court's expansion of the equitable tolling doctrine. The district court permitted tolling to begin upon respondent's receipt of the Department's Title VI policy even though she lodged no complaint with any agency until some time later. As this Court has pointed out, "the benchmark, for

purposes of a statute of limitations, is not the last phase of the multistage scheme, but the commencement of the proceeding before the administrative body." Occidental Life Ins. Co. of Cal. v. E.E.O.C., 432 U.S. 355, 372 (1977).

By rewriting these conditions, the district court was apparently influenced by respondent's claim of discrimination. However, this Court has recognized that "procedural requirements established by Congress for gaining access to the federal courts are not to be disregarded by courts out of a vague sympathy for particular litigants." Baldwin County Welcome Center v. Brown, __ U.S. __, 104 S. Ct. 1723, 1726 (1984). The action of the district court was completely contrary to this directive and amounted to a usurpation of Congress' authority to specify the conditions of an abrogation of Eleventh Amendment immunity.

CONCLUSION

For each of the reasons above, petitioners respectfully request this Court to grant the petition for a writ of certiorari.

DATED March 11, 1985.

Respectfully submitted,

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APPENDICES

APPENDIX A

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

VIRGINIA M. OLIVER, Plaintiff,	CV-R-83-75-ECR
v.	Filed March 7, 1984
STATE OF NEVADA, et al., Defendants.	

ORDER

Plaintiff claims that she was terminated from a position with the Nevada Department of Wildlife (NDOW) due to illegal sex discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et. seq. Defendant NDOW has filed a motion for summary judgment, contending that plaintiff's claim was not filed within the period prescribed by 42 U.S.C. § 2000e-5.

Facts

Plaintiff was terminated from her position with NDOW on July 31, 1981. She

testified that she contacted the federal Equal Employment Opportunity Commission (EEOC) by telephone shortly thereafter, that an unidentified person at that agency returned her call and told her that she had 300 days in which to file a complaint,[1] but that she was not told how to go about filing a complaint with the EEOC.

Late in December of 1981, a friend of the plaintiff's provided her with a copy of NDOW's amended non-discrimination policy. This policy was intended to facilitate compliance with the U.S. Department of Interior's (DOI) Title VI guidelines. Title VI prohibits discrimination on the basis of race, color, national origin, age, or handicap in any program or activity receiving federal financial assistance. It does not prohibit employment discrimination or sex discrimination.

The NDOW non-discrimination policy, however, recited that

> It is the policy of this Department that no person in the United States shall on the grounds of race, color, sex, national origin, age, or handicap be excluded from participating in, denied the benefits of, or subjected to discrimination under any Department program or activity.

[Emphasis added.] The policy also recommended that

> If you believe that you have been discriminated against in any program, activity or facility, it is your right to file a written complaint with:
>
> The Office of Equal Opportunity
> U.S. Department of the Interior
> Office of the Secretary
> Washington, D.C. 20240

Plaintiff testified that she interpreted the NDOW policy to mean that she could file her claim of employment discrimination with the Department of the Interior, and that she spent about two weeks drafting a letter of complaint to that agency,

containing the specifics of her discrimination claim. On January 14, 1982, she sent the letter to the DOI's Office of Equal Opportunity. On February 12, 1982, DOI advised her that they had no jurisdiction to resolve employment discrimination claims, and referred plaintiff to the EEOC. On March 9, 1982, plaintiff wrote to the EEOC, enclosing a copy of the letter she had originally sent to DOI. The EEOC received this letter on March 11, 1982. Plaintiff received a "right to sue" letter from the EEOC on December 6, 1982. The complaint in the lawsuit was filed on March 4, 1983.

Discussion[2]

Our analysis begins with the proposition that in doubtful cases, legal disputes should be resolved on the merits rather than on procedural technicalities. This is particularly true where, as here, we are confronted with "a statutory scheme

in which laymen, unassisted by trained lawyers, initiate the process." Love v. Pullman Co., 404 U.S. 522, 527 (1972).

This Court finds that plaintiff's belief that she was required to file her claims with DOI was reasonable. Among the factors we have considered in reaching this conclusion is the ambiguity of defendant's amended non-discrimination policy with respect to whether it covers claims of sex discrimination. This ambiguity should be resolved against the defendant as the party responsible for drafting and issuing the policy statement.

In order to assert a claim of discrimination under Title VII, a claimant must file a complaint with the EEOC within 180 days after the alleged discriminatory practice occurred. 42 U.S.C. 2000e-5(e). This limitations period is subject to equitable tolling. Zipes v. Trans World Airlines, 455 U.S. 385, 393 (1982).

In the present case, the Court finds that the limitations period began when plaintiff was terminated (July 31, 1981). She sent her complaint to the EEOC on March 9, 1982 (221 days later[3]). However, we further find that because plaintiff was reasonable in her belief that she was required to initially file her claim with DOI, the limitations period should be tolled for the period beginning when she first learned of the existence of the amended non-discrimination policy in late December of 1981, continuing for the period of time required to prepare the letter that she sent to DOI, and terminating when DOI advised her that it had no jurisdiction over her claim (February 12, 1982). Thus it appears that a reasonable tolling period is 43 days. Therefore, although plaintiff's claim was not filed with EEOC until 221 days after she was terminated, once the 43 days are deducted

her claim was filed well within the limitations period of § 20003-5(e).

IT IS, THEREFORE, HEREBY ORDERED that defendant NDOW's Motion for Summary Judgment is denied.[4]

DATED: March 6, 1984.

/s/ Edward C. Reed

United States District Judge

Footnotes

1 This information appears to have been incorrect, since the 300-day period applies only if a complaint is initially filed with an appropriate state agency. 42 U.S.C. 2000e-5(e).

2 Plaintiff's contention that the statute of limitations issue should be submitted to the jury for decision is without merit. Compliance with a statute of limitations is at best a mixed question of law and fact that is for the Court to decide.

3 This Court's statement in its order of December 12, 1983, that plaintiff filed her claim with the EEOC 192 days after she was terminated was based on an erroneous calculation.

4 It should be noted that this Order does not constitute a decision on the merits of plaintiff's sex discrimination claim. It merely allows the

case to go forward so that the merits can be determined.

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

VIRGINIA M. OLIVER	)	
	)	
vs.	)	CIVIL-R-83-75-ECR
	)	MINUTES OF THE
STATE OF NEVADA, et al	)	COURT
	)	
	)	DATE: May 8, 1984

PRESENT: EDWARD C. REED, JR.
U.S. DISTRICT JUDGE
Deputy Clerk: Lana L. Hughes
Reporter: None PRESENT
Counsel for Plaintiff (s) None Present
Counsel for Defendant (s) None Present
MINUTE ORDER IN CHAMBERS XX

IT IS ORDERED that the motion to amend Court's order to permit an immediate appeal on behalf of the defendant State of Nevada (#59) is hereby denied.

IT IS FURTHER ORDERED that the motion to amend Court's order on January 19, 1984, to permit immediate appeal on behalf of defendants Molini, Greenley and Bargover (#62) is hereby denied.

This is not the unusual case in which costs and risks of multiplying the

proceedings and of overcrowding the appellate docket are outweighed by the pressing needs of litigants for an early and separate judgment as to some issues or parties. Appeal at this time may result in unnecessary appellate review. The review of the issues sought to be appealed may be mooted by future developments in the case.

So far as the denial of summary judgment by this Court is concerned, the appellate Court may have to decide the issued (sic) there involved more than once if interlocutory appeal is permitted. The orders sought to be appealed on an interlocutory basis are not appealable. The notice of appeal filed on April 6, 1984, is of no force or effect.

CAROL C. FITZGERALD, CLERK

By /s/ Lana L. Hughes

Deputy Clerk

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

VIRGINIA M. OLIVER, Plaintiff-Appellee,	)	No. 84-1827 DC# CV-83-0075 ECR Nevada (Reno)
vs.	)	ORDER
STATE OF NEVADA, et al., Defendants-Appellants.	)	Filed October 9, 1984

Before: GOODWIN, TANG and FERGUSON, Circuit Judges

This appeal is dismissed for lack of jurisdiction., The order sought to be reviewed is not a collateral order within the meaning of Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 546-47 (1949).

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

VIRGINIA M. OLIVER, Plaintiff-Appellee,	)	No. 84-1827
vs.	)	DC# CV-83-0075 ECR Nevada (Reno)
STATE OF NEVADA, et al., Defendants-Appellants.	)	ORDER
	)	Filed December 28, 1984

Before: GOODWIN, TANG and FERGUSON, Circuit Judges

The panel has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc. The full court has been advised of the suggestion and, no active judge having requested a vote, the suggestion is rejected.

APPENDIX E

UNITED STATES CONSTITUTION

ARTICLE III

Section 1. The judicial power of the United States, shall be vested in one supreme court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime

jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state, claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before-mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury;

and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

APPENDIX F

28 U.S.C. § 1291

Final Decisions of District Courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

APPENDIX G

42 U.S.C. § 2000e-5(b) and (e)

Enforcement provisions

(b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or

affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d) of this section. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment

practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) of this section, from the date upon which the Commission is authorized to take action with respect to the charge.

(c) . . .

(d) . . .

(e) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved as initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days

after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.